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CS/CS/HB 453

2009 Legislature

1                                   A bill to be entitled  
2           An act relating to tax credits for contributions to  
3           nonprofit scholarship-funding organizations; amending s.  
4           220.186, F.S.; providing that the credit authorized under  
5           the Florida Tax Credit Scholarship Program does not apply  
6           to the credit for the Florida alternative minimum tax;  
7           amending s. 220.187, F.S.; defining the term "direct  
8           certification list"; expanding the Corporate Income Tax  
9           Credit Scholarship Program to include insurance premium  
10          tax credits; revising credits for contributions to  
11          nonprofit scholarship-funding organizations; providing  
12          that a taxpayer eligible to receive a credit against the  
13          insurance premium tax is not eligible to receive a credit  
14          against the corporate income tax; imposing an additional  
15          requirement on the Department of Education; specifying  
16          school district tax credit scholarship notification  
17          requirements and limitations; conforming cross-references;  
18          creating s. 624.51055, F.S.; providing for credits against  
19          the insurance premium tax for contributions to certain  
20          eligible nonprofit scholarship-funding organizations;  
21          providing application; amending ss. 1002.20, 1002.23,  
22          1002.39, and 1002.421, F.S.; providing conforming  
23          revisions; authorizing certain insurers that made past  
24          contributions to the Florida Tax Credit Scholarship  
25          Program to claim the credits against future corporate  
26          income tax liability; requiring the insurer to apply to  
27          the Department of Revenue for the tax credits; requiring  
28          such insurers to file amended corporate income tax and

Page 1 of 15

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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ENROLLED  
CS/CS/HB 453

2009 Legislature

29 insurance premium tax returns; providing severability;  
30 providing an effective date.  
31

32 Be It Enacted by the Legislature of the State of Florida:  
33

34 Section 1. Subsection (2) of section 220.186, Florida  
35 Statutes, is amended to read:

36 220.186 Credit for Florida alternative minimum tax.--

37 (2) The credit pursuant to this section shall be the  
38 amount of the excess, if any, of the tax paid based upon taxable  
39 income determined pursuant to s. 220.13(2)(k) over the amount of  
40 tax which would have been due based upon taxable income without  
41 application of s. 220.13(2)(k), before application of this  
42 credit without application of any credit under s. 220.187.

43 Section 2. Subsections (2) and (3), paragraph (b) of  
44 subsection (5), paragraphs (b) and (i) of subsection (6), and  
45 paragraphs (a), (b), (l), and (n) of subsection (9) of section  
46 220.187, Florida Statutes, are amended, paragraph (e) is added  
47 to subsection (5) of that section, paragraph (o) is added to  
48 subsection (9) of that section, subsections (10) through (14) of  
49 that section are renumbered as subsections (11) through (15),  
50 respectively, and a new subsection (10) is added to that  
51 section, to read:

52 220.187 Credits for contributions to nonprofit  
53 scholarship-funding organizations.--

54 (2) DEFINITIONS.--As used in this section, the term:

55 (a) "Department" means the Department of Revenue.

ENROLLED  
CS/CS/HB 453

2009 Legislature

56           (b) "Direct certification list" means the certified list  
 57 of children who qualify for the Food Stamp Program, the  
 58 Temporary Assistance to Needy Families Program, or the Food  
 59 Distribution Program on Indian Reservations provided to the  
 60 Department of Education by the Department of Children and Family  
 61 Services.

62           (c)~~(b)~~ "Eligible contribution" means a monetary  
 63 contribution from a taxpayer, subject to the restrictions  
 64 provided in this section, to an eligible nonprofit scholarship-  
 65 funding organization. The taxpayer making the contribution may  
 66 not designate a specific child as the beneficiary of the  
 67 contribution.

68           (d)~~(e)~~ "Eligible nonprofit scholarship-funding  
 69 organization" means a charitable organization that:

- 70           1. Is exempt from federal income tax pursuant to s.
- 71           501(c)(3) of the Internal Revenue Code;
- 72           2. Is a Florida entity formed under chapter 607, chapter
- 73           608, or chapter 617 and whose principal office is located in the
- 74           state; and
- 75           3. Complies with the provisions of subsection (6).

76           (e)~~(d)~~ "Eligible private school" means a private school,  
 77 as defined in s. 1002.01(2), located in Florida which offers an  
 78 education to students in any grades K-12 and that meets the  
 79 requirements in subsection (8).

80           (f)~~(e)~~ "Owner or operator" includes:

- 81           1. An owner, president, officer, or director of an
- 82           eligible nonprofit scholarship-funding organization or a person

ENROLLED  
CS/CS/HB 453

2009 Legislature

83 with equivalent decisionmaking authority over an eligible  
84 nonprofit scholarship-funding organization.

85 2. An owner, operator, superintendent, or principal of an  
86 eligible private school or a person with equivalent  
87 decisionmaking authority over an eligible private school.

88 (3) PROGRAM; SCHOLARSHIP ELIGIBILITY.--The Florida  
89 ~~Corporate Income~~ Tax Credit Scholarship Program is established.  
90 A student is eligible for a Florida ~~corporate income~~ tax credit  
91 scholarship under this section or s. 624.51055 if the student  
92 qualifies for free or reduced-price school lunches under the  
93 National School Lunch Act or is on the direct certification list  
94 and:

95 (a) Was counted as a full-time equivalent student during  
96 the previous state fiscal year for purposes of state per-student  
97 funding;

98 (b) Received a scholarship from an eligible nonprofit  
99 scholarship-funding organization or from the State of Florida  
100 during the previous school year;

101 (c) Is eligible to enter kindergarten or first grade; or

102 (d) Is currently placed, or during the previous state  
103 fiscal year was placed, in foster care as defined in s. 39.01.

104  
105 Contingent upon available funds, a student may continue in the  
106 scholarship program as long as the student's household income  
107 level does not exceed 200 percent of the federal poverty level.  
108 A sibling of a student who is continuing in the program and  
109 resides in the same household as the student shall also be  
110 eligible as a first-time ~~corporate income~~ tax credit scholarship

ENROLLED  
CS/CS/HB 453

2009 Legislature

111 recipient as long as the student's and sibling's household  
112 income level does not exceed 200 percent of the federal poverty  
113 level. Household income for purposes of a student who is  
114 currently in foster care as defined in s. 39.01 shall consist  
115 only of the income that may be considered in determining whether  
116 he or she qualifies for free or reduced-price school lunches  
117 under the National School Lunch Act.

118 (5) AUTHORIZATION TO GRANT SCHOLARSHIP FUNDING TAX  
119 CREDITS; LIMITATIONS ON INDIVIDUAL AND TOTAL CREDITS.--

120 (b) For each state fiscal year, the total amount of tax  
121 credits and carryforward of tax credits which may be granted  
122 ~~each state fiscal year~~ under this section and s. 624.51055 is:

123 ~~1. Through June 30, 2008, \$88 million.~~

124 ~~2. Beginning July 1, 2008, and thereafter, \$118 million.~~

125 (e) A taxpayer who is eligible to receive the credit  
126 provided for in s. 624.51055 is not eligible to receive the  
127 credit provided by this section.

128 (6) OBLIGATIONS OF ELIGIBLE NONPROFIT SCHOLARSHIP-FUNDING  
129 ORGANIZATIONS.--An eligible nonprofit scholarship-funding  
130 organization:

131 (b) Must comply with the following background check  
132 requirements:

133 1. All owners and operators as defined in subparagraph  
134 (2) ~~(f)~~ ~~(e)~~ 1. are, upon employment or engagement to provide  
135 services, subject to level 2 background screening as provided  
136 under chapter 435. The fingerprints for the background screening  
137 must be electronically submitted to the Department of Law  
138 Enforcement and can be taken by an authorized law enforcement

ENROLLED  
CS/CS/HB 453

2009 Legislature

139 agency or by an employee of the eligible nonprofit scholarship-  
140 funding organization or a private company who is trained to take  
141 fingerprints. However, the complete set of fingerprints of an  
142 owner or operator may not be taken by the owner or operator. The  
143 results of the state and national criminal history check shall  
144 be provided to the Department of Education for screening under  
145 chapter 435. The cost of the background screening may be borne  
146 by the eligible nonprofit scholarship-funding organization or  
147 the owner or operator.

148       2. Every 5 years following employment or engagement to  
149 provide services or association with an eligible nonprofit  
150 scholarship-funding organization, each owner or operator must  
151 meet level 2 screening standards as described in s. 435.04, at  
152 which time the nonprofit scholarship-funding organization shall  
153 request the Department of Law Enforcement to forward the  
154 fingerprints to the Federal Bureau of Investigation for level 2  
155 screening. If the fingerprints of an owner or operator are not  
156 retained by the Department of Law Enforcement under subparagraph  
157 3., the owner or operator must electronically file a complete  
158 set of fingerprints with the Department of Law Enforcement. Upon  
159 submission of fingerprints for this purpose, the eligible  
160 nonprofit scholarship-funding organization shall request that  
161 the Department of Law Enforcement forward the fingerprints to  
162 the Federal Bureau of Investigation for level 2 screening, and  
163 the fingerprints shall be retained by the Department of Law  
164 Enforcement under subparagraph 3.

165       3. Beginning July 1, 2007, all fingerprints submitted to  
166 the Department of Law Enforcement as required by this paragraph

ENROLLED  
CS/CS/HB 453

2009 Legislature

167 must be retained by the Department of Law Enforcement in a  
168 manner approved by rule and entered in the statewide automated  
169 fingerprint identification system authorized by s. 943.05(2)(b).  
170 The fingerprints must thereafter be available for all purposes  
171 and uses authorized for arrest fingerprint cards entered in the  
172 statewide automated fingerprint identification system pursuant  
173 to s. 943.051.

174 4. Beginning July 1, 2007, the Department of Law  
175 Enforcement shall search all arrest fingerprint cards received  
176 under s. 943.051 against the fingerprints retained in the  
177 statewide automated fingerprint identification system under  
178 subparagraph 3. Any arrest record that is identified with an  
179 owner's or operator's fingerprints must be reported to the  
180 Department of Education. The Department of Education shall  
181 participate in this search process by paying an annual fee to  
182 the Department of Law Enforcement and by informing the  
183 Department of Law Enforcement of any change in the employment,  
184 engagement, or association status of the owners or operators  
185 whose fingerprints are retained under subparagraph 3. The  
186 Department of Law Enforcement shall adopt a rule setting the  
187 amount of the annual fee to be imposed upon the Department of  
188 Education for performing these services and establishing the  
189 procedures for the retention of owner and operator fingerprints  
190 and the dissemination of search results. The fee may be borne by  
191 the owner or operator of the nonprofit scholarship-funding  
192 organization.

ENROLLED  
CS/CS/HB 453

2009 Legislature

193           5. A nonprofit scholarship-funding organization whose  
194 owner or operator fails the level 2 background screening shall  
195 not be eligible to provide scholarships under this section.

196           6. A nonprofit scholarship-funding organization whose  
197 owner or operator in the last 7 years has filed for personal  
198 bankruptcy or corporate bankruptcy in a corporation of which he  
199 or she owned more than 20 percent shall not be eligible to  
200 provide scholarships under this section.

201           (i)1. May use up to 3 percent of eligible contributions  
202 received during the state fiscal year in which such  
203 contributions are collected for administrative expenses if the  
204 organization has operated under this section for at least 3  
205 state fiscal years and did not have any negative financial  
206 findings in its most recent audit under paragraph (1). Such  
207 administrative expenses must be reasonable and necessary for the  
208 organization's management and distribution of eligible  
209 contributions under this section. No more than one-third of the  
210 funds authorized for administrative expenses under this  
211 subparagraph may be used for expenses related to the recruitment  
212 of contributions from ~~corporate~~ taxpayers.

213           2. Must expend for annual or partial-year scholarships an  
214 amount equal to or greater than 75 percent of the net eligible  
215 contributions remaining after administrative expenses during the  
216 state fiscal year in which such contributions are collected. No  
217 more than 25 percent of such net eligible contributions may be  
218 carried forward to the following state fiscal year. Any amounts  
219 carried forward shall be expended for annual or partial-year  
220 scholarships in the following state fiscal year. Net eligible



ENROLLED  
CS/CS/HB 453

2009 Legislature

221 contributions remaining on June 30 of each year that are in  
222 excess of the 25 percent that may be carried forward shall be  
223 returned to the State Treasury for deposit in the General  
224 Revenue Fund.

225 3. Must, before granting a scholarship for an academic  
226 year, document each scholarship student's eligibility for that  
227 academic year. A scholarship-funding organization may not grant  
228 multiyear scholarships in one approval process.

229  
230 Any and all information and documentation provided to the  
231 Department of Education and the Auditor General relating to the  
232 identity of a taxpayer that provides an eligible contribution  
233 under this section shall remain confidential at all times in  
234 accordance with s. 213.053.

235 (9) DEPARTMENT OF EDUCATION OBLIGATIONS.--The Department  
236 of Education shall:

237 (a) Annually submit to the department, by March 15, a list  
238 of eligible nonprofit scholarship-funding organizations that  
239 meet the requirements of paragraph (2) (d) ~~(e)~~.

240 (b) Annually verify the eligibility of nonprofit  
241 scholarship-funding organizations that meet the requirements of  
242 paragraph (2) (d) ~~(e)~~.

243 (1) Notify an eligible nonprofit scholarship-funding  
244 organization of any of the organization's identified students  
245 who are receiving ~~corporate-income~~ tax credit scholarships from  
246 other eligible nonprofit scholarship-funding organizations.

247 (n)1. Conduct random site visits to private schools  
248 participating in the Florida ~~Corporate~~ Tax Credit Scholarship

ENROLLED  
CS/CS/HB 453

2009 Legislature

249 Program. The purpose of the site visits is solely to verify the  
250 information reported by the schools concerning the enrollment  
251 and attendance of students, the credentials of teachers,  
252 background screening of teachers, and teachers' fingerprinting  
253 results. The Department of Education may not make more than  
254 seven random site visits each year and may not make more than  
255 one random site visit each year to the same private school.

256 2. Annually, by December 15, report to the Governor, the  
257 President of the Senate, and the Speaker of the House of  
258 Representatives the Department of Education's actions with  
259 respect to implementing accountability in the scholarship  
260 program under this section and s. 1002.421, any substantiated  
261 allegations or violations of law or rule by an eligible private  
262 school under this program concerning the enrollment and  
263 attendance of students, the credentials of teachers, background  
264 screening of teachers, and teachers' fingerprinting results and  
265 the corrective action taken by the Department of Education.

266 (o) Provide a process to match the direct certification  
267 list with the scholarship application data submitted by any  
268 nonprofit scholarship-funding organization eligible to receive  
269 the 3-percent administrative allowance under paragraph (6)(i).

270 (10) SCHOOL DISTRICT OBLIGATIONS; PARENTAL OPTIONS.--Upon  
271 the request of any eligible nonprofit scholarship-funding  
272 organization, a school district shall inform all households  
273 within the district receiving free or reduced-priced meals under  
274 the National School Lunch Act of their eligibility to apply for  
275 a tax credit scholarship. The form of such notice shall be  
276 provided by the eligible nonprofit scholarship-funding

ENROLLED  
CS/CS/HB 453

2009 Legislature

277 organization and the district shall include the provided form,  
 278 if requested by the organization, in any normal correspondence  
 279 with eligible households. If an eligible nonprofit scholarship-  
 280 funding organization requests a special communication to be  
 281 issued to households within the district receiving free or  
 282 reduced-price meals under the National School Lunch Act, the  
 283 organization shall reimburse the district for the cost of  
 284 postage. Such notice is limited to once a year.

285 Section 3. Section 624.51055, Florida Statutes, is created  
 286 to read:

287 624.51055 Credit for contributions to eligible nonprofit  
 288 scholarship-funding organizations.--

289 (1) There is allowed a credit of 100 percent of an  
 290 eligible contribution made to an eligible nonprofit scholarship-  
 291 funding organization as provided in s. 220.187 against any tax  
 292 due for a taxable year under s. 624.509(1). However, such a  
 293 credit may not exceed 75 percent of the tax due under s.  
 294 624.509(1) after deducting from such tax deductions for  
 295 assessments made pursuant to s. 440.51; credits for taxes paid  
 296 under ss. 175.101 and 185.08; credits for income taxes paid  
 297 under chapter 220; credits for the emergency excise tax paid  
 298 under chapter 221; and the credit allowed under s. 624.509(5),  
 299 as such credit is limited by s. 624.509(6). An insurer claiming  
 300 a credit against premium tax liability under this section shall  
 301 not be required to pay any additional retaliatory tax levied  
 302 pursuant to s. 624.5091 as a result of claiming such credit.  
 303 Section 624.5091 does not limit such credit in any manner.

ENROLLED  
CS/CS/HB 453

2009 Legislature

304           (2) The provisions of s. 220.187 apply to the credit  
305 authorized by this section.

306           Section 4. Paragraph (b) of subsection (6) of section  
307 1002.20, Florida Statutes, is amended to read:

308           1002.20 K-12 student and parent rights.--Parents of public  
309 school students must receive accurate and timely information  
310 regarding their child's academic progress and must be informed  
311 of ways they can help their child to succeed in school. K-12  
312 students and their parents are afforded numerous statutory  
313 rights including, but not limited to, the following:

314           (6) EDUCATIONAL CHOICE.--

315           (b) Private school choices.--Parents of public school  
316 students may seek private school choice options under certain  
317 programs.

318           1. Under the Opportunity Scholarship Program, the parent  
319 of a student in a failing public school may request and receive  
320 an opportunity scholarship for the student to attend a private  
321 school in accordance with the provisions of s. 1002.38.

322           2. Under the McKay Scholarships for Students with  
323 Disabilities Program, the parent of a public school student with  
324 a disability who is dissatisfied with the student's progress may  
325 request and receive a McKay Scholarship for the student to  
326 attend a private school in accordance with the provisions of s.  
327 1002.39.

328           3. Under the Florida ~~corporate income~~ Tax Credit  
329 Scholarship Program, the parent of a student who qualifies for  
330 free or reduced-price school lunch may seek a scholarship from

ENROLLED  
CS/CS/HB 453

2009 Legislature

331 an eligible nonprofit scholarship-funding organization in  
332 accordance with the provisions of s. 220.187.

333 Section 5. Paragraph (e) of subsection (2) of section  
334 1002.23, Florida Statutes, is amended to read:

335 1002.23 Family and School Partnership for Student  
336 Achievement Act.--

337 (2) To facilitate meaningful parent and family  
338 involvement, the Department of Education shall develop  
339 guidelines for a parent guide to successful student achievement  
340 which describes what parents need to know about their child's  
341 educational progress and how they can help their child to  
342 succeed in school. The guidelines shall include, but need not be  
343 limited to:

344 (e) Educational choices, as provided for in s. 1002.20(6),  
345 and Florida ~~corporate income~~ tax credit scholarships, as  
346 provided for in s. 220.187;

347 Section 6. Paragraph (b) of subsection (3) of section  
348 1002.39, Florida Statutes, is amended to read:

349 1002.39 The John M. McKay Scholarships for Students with  
350 Disabilities Program.--There is established a program that is  
351 separate and distinct from the Opportunity Scholarship Program  
352 and is named the John M. McKay Scholarships for Students with  
353 Disabilities Program.

354 (3) JOHN M. MCKAY SCHOLARSHIP PROHIBITIONS.--A student is  
355 not eligible for a John M. McKay Scholarship while he or she is:

356 (b) Receiving a Florida ~~corporate income~~ tax credit  
357 scholarship under s. 220.187;

ENROLLED  
CS/CS/HB 453

2009 Legislature

358 Section 7. Subsection (1) of section 1002.421, Florida  
359 Statutes, is amended to read:

360 1002.421 Accountability of private schools participating  
361 in state school choice scholarship programs.--

362 (1) A Florida private school participating in the Florida  
363 ~~Corporate Income~~ Tax Credit Scholarship Program established  
364 pursuant to s. 220.187 or an educational scholarship program  
365 established pursuant to this chapter must comply with all  
366 requirements of this section in addition to private school  
367 requirements outlined in s. 1002.42, specific requirements  
368 identified within respective scholarship program laws, and other  
369 provisions of Florida law that apply to private schools.

370 Section 8. If an insurance company that filed corporate  
371 income tax returns under chapter 220, Florida Statutes, on a  
372 separate-company basis and made an eligible contribution under  
373 s. 220.187, Florida Statutes, for its tax year that began during  
374 the calendar year 2006, 2007, or 2008, but did not receive a  
375 dollar-for-dollar benefit for making the contribution, taking  
376 into account its net corporate income tax liability and  
377 corresponding insurance premium tax liability, the insurance  
378 company may apply to the Department of Revenue by July 31, 2009,  
379 to apply the credits against its 2009 corporate income tax  
380 liability and carry over unused credit amounts as allowed by s.  
381 220.187, Florida Statutes. An insurer's scholarship credit  
382 amounts from 2006, 2007, and 2008 that are applied in 2009 shall  
383 be treated as corporate income taxes paid for the purposes of  
384 computing the amount of insurance premium taxes owed by the  
385 insurance company. Notwithstanding ss. 95.091 and 215.26,

ENROLLED  
CS/CS/HB 453

2009 Legislature

386 Florida Statutes, the insurer must file amended corporate income  
387 tax returns as part of its application for its tax years that  
388 began during the calendar years 2006, 2007, and 2008 in order to  
389 remove all credits claimed under s. 220.187, Florida Statutes,  
390 for those years and correct the amount of corporate income taxes  
391 paid. The insurer must also file amended insurance premium tax  
392 returns as part of its application. This section does not  
393 increase the annual cap per fiscal year on total tax credits and  
394 carryforwards of tax credits set forth in s. 220.187(5)(b),  
395 Florida Statutes.

396       Section 9. If any provision of this act or the application  
397 thereof to any person or circumstance is held invalid, the  
398 invalidity shall not affect other provisions or applications of  
399 the act which can be given effect without the invalid provision  
400 or application, and to this end the provisions of this act are  
401 declared severable.

402       Section 10. This act shall take effect July 1, 2009.